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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,080	04/22/2004	Todd Russell Ingram		6026

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TODD RUSSELL INGRAM  
19330 ATTALA ROAD #4101  
WEST, MS 39192

EXAMINER

OKEZIE, ESTHER O

ART UNIT PAPER NUMBER

3652

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/829,080	<b>Applicant(s)</b> INGRAM, TODD RUSSELL	
	<b>Examiner</b> Esther O. Okezie	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-19 is/are pending in the application.
- 4a) Of the above claim(s) 11, 13-15, 17 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-10, 12, 16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 11, 13-15, 17 and 19 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on 1/31/2006 and the remarks presented therewith have carefully considered. Applicant's arguments with respect to claims 7-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species:

Species I: Figures 1,2,6,9-12;

Species II: Figures 3 and 4;

Species III: Figure 5,7,8.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

During a telephone conversation with Windall F. Ingram on 4/10/06 a provisional election was made without traverse to prosecute the invention of Species 1, claims 7-10,12,16,18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11,13,14,15,17,19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 7,8,9,10 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Thayer US 1,281,708.
2. Re claim 7, Thayer discloses a tool comprising unary, V-shaped, open jawed mouth (arms 12 and 13); means of said open jawed mouth exhibiting a spring-like effect when urged wider open (col. 2, lines 55-46; figure 3); ridges (15) spaced at intervals around the inner perimeter of said open jawed mouth; an elongated connecting rod

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(10,11); means of joining said connecting rod at its lower end to one side of said open jawed mouth such that the closed end of said open-jawed mouth is directed toward said fireplace tool's user (fig 1); a handgrip (upper section of 10); means of joining said handgrip to said connecting rod at its upper end,

The functional recitation "whereby a user can grip said fireplace tool by said hand grip, push said open jawed mouth onto said log, thus applying a progressively tightened gripping force created by the combination of said spring-like effect and said friction effect, lift, move, reposition, and release said log, without manipulating any moving parts" has not been given patentable weight because it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*.

Thayer does not disclose "means of said open-jawed mouth resisting the heat of a fire." It would have been obvious to one of ordinary skill at the time of the invention to make the log-removal device of Thayer heat resistant so that the device would not melt when removing logs from a fire. Heat resistant log handling tools are well known in the art.

3. Re claim 8, Thayer discloses a wedge-shaped tip at the open end of one side of said open jawed mouth (fig 1).

4. Re claims 9 and 10, Thayer does not disclose the material from which the jaw (arms 12 and 13) are made. It would have been obvious to one of ordinary skill at the time of the invention to form the jaws from iron or steel as iron and steel are well known

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as durable materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

5. Re claim 12, Thayer discloses joining three pieces the open jawed mouth, connecting rod, and handgrip (fig 1).

6. Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thayer US 1,281,708 in view of US Patent Application Publication 2005/0110289 to Myers. Thayer does not disclose the use of threaded coupling to connect the jaw, rod or handgrip together. Myers discloses a dual function fireplace poker connected by threaded couplings (see fig 2 and paragraph 18) It would have been obvious to one of ordinary skill at the time of the invention to connect the sections of the tool of Thayer by threaded couplings as taught by Myer so that the tool could be disassembled and stored in a compact manner.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 4/15/06

  
DEAN J. KRAMER  
PRIMARY EXAMINER